No. 96-1816

Supreme Court, U.S.
FILED
JUN 27 1997
CLERK

IN THE

Supreme Court of the United States

October Term, 1996

ALBERT G. PRODELL, MICHAEL FUCITO, CAROLYN BAIER, NORMAN E. HOLDEN, WILLIAM C. HUDSON, RICHARD STRAND, MARY LOU ABATA, JOY KIRSCHENBAUM, PETER VALLELY and JOHN K. DOLLARD, individually and on behalf of all other persons similarly situated, and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT,

Petitioners,

against

THE STATE OF NEW YORK and THE TOWN OF BROOKHAVEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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181 Delaware Street, Walton, NY 13856—800-252-7181
(3333 – 1997)

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TABLE OF CONTENTS

Page

Reply Argument for Granting the Petition 2

Conclusion 5

TABLE OF AUTHORITIES

Page

Cases:

City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) 3

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 3

Long Island Lighting Company v. Assessor, 154 A.D.2d 188, 552 N.Y.S.2d 336 (2d Dept. 1990) 4

Long Island Power Authority v. Shoreham Wading-River Cent. School Dist.,88 N.Y.2d 503, 670 N.E. 2d 419, 647 N.Y.S.2d 135 (1996) 5

Town of Brookhaven v. State of New York, 142 A.D.2d 338, 535 N.Y.S.2d 773, (3d Dept. 1988), *appeal dismissed*, 74 N.Y.2d 714 (1989) 4

Trump v. Chu, 65 N.Y.2d 20, 25 (1985) 4

Vance v. Bradley, 440 U.S. 93, 97 (1979) 3

Western & Southern Life Insurance Company v. State Board of Equalization, 451 U.S. 648 (1981) 3

Statutes:

Long Island Power Authority Act, Public Authorities Law, Section 1020-q 4

New York State Suffolk County Tax Act, Article I, Section 3, as amended by Chapter 1018 of the Laws of 1983 . 3, 4, 5

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Petitioners Albert G. Prodell, Michael Fucito, Carolyn Baier, Norman E. Holden, William C. Hudson, Richard Strand, Mary

Lou Abata, Joy Kirschenbaum, Peter Vallely and John K. Dollard, individually and on behalf of all other persons similarly situated, and the Shoreham-Wading River Central School District, respectfully pray that a writ of certiorari issue to review the Opinion and Order of the New York State Appellate Division, Third Department, in this action decided and entered July 18, 1996.

REPLY ARGUMENT FOR GRANTING THE PETITION

Respondents Have Been Unable to Demonstrate a Rational Connection Between the Imposition of Tax Refund Liability on a School District Only in the Case of Nuclear Plant Overassessment and the Legislative Goal of Avoiding "Tax Windfalls."

Petitioners assert three points in reply to the briefs of the Respondents State of New York and Town of Brookhaven:

(1) As a matter of constitutional logic, the decision to be reviewed conflicts with prior decisions of this Court and a host of other Federal courts;

(2) Although Respondents refer to the state-wide practice of school districts bearing responsibility for real property tax refunds, the challenged statute applies only to Suffolk County on Long Island, where school district taxpayers have historically never been subjected to real property tax refund liability except in this one case applying to the Petitioner taxpayers; and

(3) There is no provision for payments in lieu of taxes ("PILOT") to the Petitioners that will in any way alleviate or soften the blow from the devastating impact of Shoreham tax refund liability.

All parties are in agreement as to the fundamental proposition of law underlying this case, which is that a statutory classification does not violate the Equal Protection Clause if it is *rationally* related to the achievement of a legitimate governmental purpose. The question raised by this Petition is whether there is such a rational connection between the classification—residents within a school district having a nuclear power plant—and the legislative goal of avoiding a tax "windfall." The linchpin of the Appellate Division decision upholding the constitutionality of Chapter 1018 of the Laws of 1983 is the court's statement that "the Legislature could rationally have assumed that if such [nuclear] facilities turned out to be overassessed, any tax refund would impose a greater tax windfall for school districts with such facilities if they did not have to pay the entire refund themselves." This statement only means the obvious—that a school district would receive a greater tax windfall from the overassessment of a nuclear facility if it is not required to pay an entire refund itself. The statement, a tautology, is a flaw in logic and is irrational. It is equivalent to the statement: "I will have more money if I am not required to pay out money." This irrational statement in no way establishes the connection between the statutory classification based on nuclear facilities (as opposed to other overassessed property) and the avoidance of tax windfalls.

The issue raised by this Petition does not present a conflict among the Circuit Courts of Appeal as to a legal proposition; rather, it presents a conflict with numerous decisions of this and other Federal Courts as to the application of constitutional logic in performing Equal Protection analysis. *See, e.g., City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); *Western & Southern Life Insurance Company v. State Board of Equalization*, 451 U.S. 648, 657 (1981); *Vance v.*

Bradley, 440 U.S. 93, 97 (1979); *Trump v. Chu*, 65 N.Y.2d 20, 25 (1985); *Long Island Lighting Company v. Assessor*, 154 A.D.2d 188, 193-94, 552 N.Y.S.2d 336, 339-40 (2d Dept. 1990); *Town of Brookhaven v. State of New York*, 142 A.D.2d 338, 340, 535, N.Y.S.2d 773, 775 (3d Dept. 1988), *appeal dismissed*, 74 N.Y.2d 714 (1989).

Respondent State of New York suggests that school districts in Suffolk County affected by Chapter 1018 are treated like other school districts throughout the State in being subject to real property tax refunds. *See* State Brief at 2. This argument is wrong for two reasons: First, the taxpayers in such Suffolk County districts are treated differently from taxpayers in non-Long Island districts, since school district taxpayers in the State are generally liable for refunds respecting all types of property, not only in the case of nuclear facilities. Second, the relevant class here for Equal Protection purposes is the tax assessing unit (Town of Brookhaven) and county jurisdiction. Taxpayers within the Shoreham Wading-River Central School District have been singled out and subjected to a massive liability that is not faced by any other similarly-situated taxpayers within the Town of Brookhaven, County of Suffolk, or Long Island.

Respondent Town of Brookhaven points out that the School District is to receive PILOT pursuant to § 1020-q of the New York Public Authorities Law, therefore implying that the impact from the unconstitutional refund liability imposed by Chapter 1018 is not so devastating. Town of Brookhaven Brief at 6. It is simply untrue that the receipt of PILOT in the future (much reduced from the amount of taxes received prior to the State's acquisition of the Shoreham plant) will in any way allay the ruinous refund liability to the Long Island Lighting Company for a multitude of tax years going back to 1976. Furthermore, the New York Court of Appeals has held the PILOTS also are

subject to refund upon a court-ordered reduction in the assessed value of the plant. *Long Island Power Authority v. Shoreham Wading-River Cent. Scho. Dist.*, 88 N.Y.2d 503, 517-18, 670 N.E.2d 419, 425-26, 647 N.Y.S.2d 135 (1996). Because of pending litigation, it is unknown if the District will ultimately benefit from a single dollar of PILOT. In any event, the issue of PILOT is wholly irrelevant to the constitutionality of Chapter 1018 of the Laws of 1983.

CONCLUSION

The Respondents, focusing only on general but settled legal propositions, have failed to address the constitutional flaw in the reasoning of the Appellate Division. This matter should be reviewed by the United States Supreme Court not to settle a disagreement as to a legal proposition, but rather to insure the application of logical and rational reasoning by courts when performing constitutional analysis. The violation of constitutional rights is no less terrible when resulting from errors in logic than when resulting from misinterpretations of law.

Dated: Poughkeepsie, New York
June 27, 1997

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